

**BOARD OF APPEALS CASE NO. 5076**

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**BEFORE THE**

**APPLICANT: Duane & Julie Schmidt,  
Steven & Teresa Hart**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow 7 lots on panhandles  
7.14 feet wide in the Agricultural District;  
Poole Road, Parcel 243, Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 8/16/00 & 8/23/00**

**HEARING DATE: September 25, 2000**

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**Record: 8/18/00 & 8/25/00**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Duane and Julie Schmidt, are requesting a variance, pursuant to Section 267-22(G) of the Harford County Code, to allow seven (7) panhandle lots less than 12.5 feet wide, each panhandle to be 7.14 feet wide.

The subject parcel is located at the southwest side of Pole Road approximately 1200 feet southeast of Conowingo Road (U.S. Route 1) and is more particularly identified on Tax Map 27, Grid 2E, Parcel 243. The parcel consists of 69.35 acres, is presently zoned AG/Agricultural and is within the Fifth Election District.

Mr. Robert Wilson appeared and qualified as an expert civil engineer and survey expert. Mr. Wilson stated that 7 lots are intended to be created on the parcel. Lot sizes will range from about 20 acres to just over 5 acres. There is an existing right of way on the property that was built in the late 1800's which bisects the property. There is a second driveway that exits to Poole Road. The parcel is sloping with slopes ranging from gentle to steep. The property has very limited access frontage, 50 feet existing. The Harford County Code requires a panhandle to be 12.5 feet but because there is only 50 total feet available, each panhandle will have a 7.5 foot panhandle. The actual width of the driveway will be 1.5 feet. In the opinion of the witness, since a residence driveway is required to be 10 feet, the 12.5 foot width of this actual driveway is more than normally associated with a residential use. Mr. Wilson went on to state that creation of a public road to access these lots would not diminish the number of lots created or the ingress/egress associated with 7 residential lots.

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Such a road would create environmental disturbance and great cost without reaping any benefit. Creation of roads in heavily forested areas like this are considered very high environmental impact and is not generally acceptable when other, less environmentally averse alternatives are available. Mr. Wilson opined that the topography coupled with existing road and limited frontage considering the size of the parcel, made the property unique. The variance is requested because of the limited road frontage, however, the witness opined that granting the variance would have no averse impacts on adjoining or neighboring properties and was consistent with the Harford County Code.

Mr. Lee Cunningham appeared and qualified as an expert professional land planner and transportation planner. The witness described Poole Road as 18-22 feet in width and stated that Poole Rd. is a typical rural road in Harford County. The property has seven (7) development rights but only has 50 feet of road frontage, consequently, the minimum road frontage requirement cannot be met without this variance. The driveway will be 12.5 feet wide and, in the opinion of the witness, will be adequate for vehicular ingress and egress, including emergency vehicles. Mr. Cunningham opined that the parcel has other unique environmental features and that construction of a public road would be both costly and intrusive and would not result in any better result for this parcel or the surrounding community. Mr. Cunningham was questioned regarding the Guides, Limitations and Standards recited in 267-9I and concluded that no adverse impacts would result from the grant of the requested variance. Mr. Cunningham stated that the property owner intends for three lots to use a private, existing drive for access to Poole Road and there is no intention to connect the two driveways.

Mr. Steve Hart appeared and testified that he is a co-owner of the subject parcel. Mr. Hart purchased the parcel last January with the intention of creating 7 building lots. He recently purchased additional road frontage to create the 50 foot access strip subject of this panhandle reduction request. While it is true that a public road could be constructed to serve the property, none of the lot sizes or their locations would change. A great deal of adverse environmental impact would result from the construction of such a road and the cost of construction would be prohibitive. The creation of a public road could create a thoroughfare where one does not presently exist.

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Lastly, the witness was unable to determine what advantage, if any, would be derived from this road. Poole Road is typical of such roads so it is assumed any public road constructed would be about 18 feet wide with 30 foot right of ways. The 12.5 foot driveway is adequate to handle the minimal vehicular traffic that will be associated with these 7 residences.

The Department of Planning and Zoning ( Department) was represented by Anthony McClune who testified that the Department recommended approval of the requested variance. A parcel as large as this would normally be subdivided and seven new lots would be appropriate for a 70 acre parcel. The Department does recommend that the Applicant and adjacent property owners enter into a common drive agreement regarding the use by three (3) of the new lots of the existing common driveway.

A number of persons appeared in opposition. Mr. John Saylor was concerned that the neighborhood had been misled regarding development of the property. He was also concerned that the panhandles were too small to adequately accommodate the vehicular traffic anticipated although he did not bring forth any evidence other than anecdotal in this regard. Mr. Saylor also alluded to the existence of some private agreement between the property owner and the neighbor who sold the Applicant the 50 foot strip for right of way. No such agreement was produced however so the Hearing Examiner must conclude it does not exist. Other opponents generally had questions or concerns but did not offer any substantive opposition evidence.

### **CONCLUSION:**

Section 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Hearing Examiner finds that the subject parcel is unique and further, that the requested variance will have no material adverse impacts. The width of the proposed driveway is more than adequate to service 7 existing homes. It is possible, assuming a common drive agreement can be reached, that 3 of the 7 properties will not even use this access point to or from Poole Road. The property is severely constrained by lack of road frontage, however, the minimal reduction requested in panhandle width, eliminates this constraint without the necessity of constructing a public road through the property, a costly and environmentally adverse proposition.

Based on the unrebutted testimony of the Applicant's experts and the Department of Planning and Zoning, the Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. The Applicants submit a Preliminary Plan to be reviewed through the Development Advisory Committee (DAC).
2. The Applicants shall submit a common drive agreement to the Department of Planning and Zoning for review and recordation with the final plat. All seven (7) lots shall be included in the common drive agreement.
3. The Applicants shall submit a final plat for review, approval and recordation.

Date    OCTOBER 26, 2000

William F. Casey  
Zoning Hearing Examiner